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EXTENSION AND MODIFICATION
OF THE
LOW-INCOME HOUSING TAX CREDIT[1]

Scheduled for a Markup

by the

Ways and Means Subcommittee on Select Revenue Measures

Joint Committee on Taxation

June 9, 1989

JCX-16-89

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[1] For a detailed description of present law and background and a discussion of issues, see Joint Committee on Taxation pamphlet, Present Law and Issues Relating to the Low-Income Housing and Rehabilitation Tax Credits (JCS-12-89), May 12, 1989.

J862-89
H782-22

ITEM	PRESENT LAW	POSSIBLE OPTION
1. Extension of credit	Authority to allocate low-income housing tax credits expires December 31, 1989.	Provides for a three-year extension of the low-income housing tax credit.
2. Carryover of credit authority	Unused credit authority may not be carried forward, nor may one State's credit authority be made available for projects in another State.	Allows a one-year carryforward of unused credit authority by allocating agencies.
3. Payment of credit	The owner of a qualifying property receives the credit over 10 years but must maintain compliance with low-income restrictions for 15 years.	Extends the period over which the credit is received to 15 years so that it coincides with the compliance period.
4. Credit recapture	Accelerated portion of credit is recaptured if the qualified basis is reduced or if the property is disposed of without posting bond satisfactory to Treasury.	Eliminates recapture. If noncompliance occurs, in addition to elimination of future credits, owners pay penalty equal to one year's credit.
5. Extended low-income use	A building for which the owner receives a credit allocation is subject to a 15-year compliance period during which that part of the building for which the credits are claimed must be rented to low-income tenants at restricted rents.	Provides that at the end of the initial compliance period: (1) the owner may not evict low-income tenants and (2) the rents of low-income tenants must remain at the levels otherwise permissible under the credit within the compliance period.
6. Acquisition of existing property and substantial rehabilitation	A 30-percent present value credit may be claimed for the taxpayer's basis in qualified acquisition property. A 70-percent present value credit may be claimed for the taxpayer's basis in new construction and qualified substantial rehabilitation expenditures. To qualify for the acquisition credit,	Permits the acquisition credit only if substantial rehabilitation is done and increases the minimum qualifying expenditure for substantial rehabilitation from $2,000 per low-income unit to the greater of $3,000 perlow-income unit or 25% of unadjusted basis.

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	substantial rehabilitation need not be undertaken. To qualify as substantial rehabilitation, qualifying expenditures must average at least $2,000 per low-income unit, but need not be made on the low-income units. Expenses may be incurred over a 24-month period.	Buildings which were owned by by or on behalf of a governmental unit may continue to qualify for the 30-percent present value credit on both qualified acquisition property and rehabilitation expenses if rehabilitation expenditures average at least $3,000 per low-income unit. These properties are not eligible for the 70-percent present value credit on the rehabilitation expenses, unless they satisfy the general rule. Under both the general rule and the special rule for governmentally-owned buildings, the rehabilitation expenditures must be on the low-income units or common areas substantially benefiting them.
7. Passive loss exception	In the case of rental real estate activities, an individual is allowed up to a $25,000 deduction equivalent amount of low-income housing credits, subject to a phaseout ratably as the taxpayer's adjusted gross income increases from $200,000 to $250,000. No amount of the credit is allowed under the special $25,000 allowance for individuals with adjusted gross income over $250,000.	Modifies the application of the passive loss restriction by removing the $250,000 adjusted gross income limitation on the $25,000 deduction equivalent allowance of the credit. Thus, up to a $25,000 deduction equivalent amount of low-income housing credits would be available to an individual, regardless of his adjusted gross income.
8. Eligibility for 70-percent credit	The qualified basis of newly constructed buildings or substantially rehabilitated buildings is eligible for a 70 percent present value credit. The qualified basis of existing buildings and newly constructed buildings which are Federally subsidized is eligible for a 30-percent present value credit. Federally-subsidized property may be eligible for the 70-percent present value credit if the Federal assistance is excluded from the eligible basis.	Retains present law, except as to definition of "substantial rehabilitation".

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	A Federally-subsidized building is any building for which there was outstanding during the taxable year or any prior year a tax-exempt bond or below market Federal loan, the proceeds of which were used to finance the building or its operation. That portion of qualified basis which is financed with the proceeds of tax-exempt bonds is eligible for the 30-percent present value credit without receiving an allocation under the State's annual credit cap. The qualified basis of a qualified low-income building for any taxable year is determined by multiplying the eligible basis of the building by the lesser of the ratio of number of low-income units to all units in the building or the ratio of the floor space of low-income units to floor space of all units.	
9. Tax-exempt bond financed property not subject to the annual credit limitation	When 70 percent or more of the aggregate basis of a building and the land on which it is located is financed with the proceeds of tax-exempt bonds which are subject to the State's bond volume cap the owner may claim the 30-percent present value credit for the entire eligible basis of the building without receiving an allocation under the State's annual credit cap.	Retains present law.
10. High-cost areas	New or substantially rehabilitated property can receive a maximum 70-percent present value credit.	Increases the maximum credit available for buildings in certain high-cost areas.
11. 10-year rule	Generally, properties placed in service within the last 10 years are ineligible for the credit. Exceptions are provided for	Grants new exception from the 10-year rule for low-income buildings the mortgages on which are subject to prepayment if the exception is necessary to avert conversion of the

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	buildings transferred in which the new owner retains the basis of the previous owner. When the transferor is a qualified tax-exempt organization or a governmental entity, the 10-year rule is applied by looking to the placed in service date of the most recent taxable owner. In addition, exceptions to the 10-year rule are provided (sec. 42(d)) for certain properties, a default on which would result in a Federal Government budget outlay.	properties to market rate use. Does not expand the definition of a "Federally assisted building".
12. Credit and HUD section 8 programs	The credit is available to qualifying properties which also receive direct Federal assistance under HUD Section 8 programs.	Provides that the credit is not available to property receiving assistance under the HUD Section 8 mod rehab and project based programs.
13. Compliance with local building and health regulations	No sanction is imposed for credit properties in violation of State and local health or building codes or regulations.	Provides that the credit is not be available to properties in violation of State and local health or building rules or regulations. If the violation is corrected within a specified period of its report, the building is treated as having been in compliance notwithstanding the temporary violation.
14. Single room occupancy units	A single room occupancy unit is eligible for the credit if the unit is subject to a six-month lease.	Retains present law.
15. Four-unit, owner-occupied structures	Owner-occupied structures with four or fewer units are ineligible for the credit.	Expands eligibility for the credit to owner-occupied buildings having four or fewer units. The expansion only applies to acquisition and rehabilitation of buildings pursuant to a development plan sponsored by a State or local government or qualified

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		non-profit.
16. Special needs services	Non-housing services may be provided to tenants in rent-restricted units on anoptional basis. If such services are mandatory and paid for by the tenant, charges for them are added to rental charges and subject to the 30-percent gross rent restriction.	Retains present law.
17. Scattered site projects	All units in a project must be located on contiguous geographic sites.	Treats scattered site housing as one project if 100 percent of dwelling units are qualified low-income units and there is common plan of financing.
18. Credits allocated to projects	Credits are allocated to buildings, although compliance is determined on a project basis.	Allows an allocation of credit on a project, rather than a building, basis.
19. Determination of eligible basis	For the new construction credit, eligible basis is determined at the placed-in-service date. For the acquisition and substantial rehabilitation credits eligible basis is determined at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account.	Provides that the determination of eligible basis for all credits is made at the end of the first taxable year of the credit period. This determination will be made before depreciation is taken into account.
20. Determination of rent for rent-restricted units	Maximum allowable rents for rent-restricted units are determined by 30 percent of qualifying income limitation adjusted for family size.	Uses apartment size rather than family size of occupants as the basis for rental charges.
21. Determination of qualifying income	Determination of qualifying income limitation is based upon area median income.	Retains present law.
22. Rent floors	For rent-restricted units, the rent is determined by taking 30 percent of the qualifying income limitation. Annually, as the qualifying income limitation changes, the allowable rent may change.	Sets the initial monthly rental payment as the minimum rental payment for the compliance period.

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23. Rents for previously qualifying tenants whose incomes now exceed the qualifying income limitations	A tenant who qualified for a rent-restricted unit may continue to be deemed to qualify even if his/her income grows to as much as 140 percent of the qualifying income limitation. The maximum allowable rent is still determined by 30 percent of the qualifying income limitation.	For tenants of rent-restricted units with incomes in excess of 100 percent but less than 140 percent of the qualifying income limitation, rents may exceed 30 percent of the qualifying income limitation by 10 cents for each dollar of the tenant's income in excess the qualifying income limitation.
24. Deep rent skewing	To qualify under the deep rent skewing exception, rents on the market rate units must be at least 300 percent of rents charged on comparable rent restricted units.	Liberalizes the deep rent skewing rules.
25. Students	Housing for students is ineligible for a credit allocation.	Expands eligible tenants to include students in government-supported job training programs, defined as JPTA and similar Federal or State programs.
26. Substantial economic effect	A partner's distributive share of partnership income, gain, loss, deduction or credit must be determined in accordance with his interest in the partnership, if the allocations to partners do not have substantial economic effect (sec. 704(b)). Treasury regulations set forth rules for meeting the substantial economic effect requirement.	Retains present law.
27. Transfer of partnership interest	Acquisition of a property requires transfer of the underlying asset or all of the interests in the asset.	Retains present law.
28. At-risk rule for low-income and rehabilitation credits	The at-risk rules applicable to rehabilitation credits treat certain nonrecourse financing as an at-risk amount, provided certain requirements are met; among the requirements are that the amount of the nonrecourse financing does not exceed 80 percent of the credit base, and	Retains present law.

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	the lender must be actively and regularly engaged in the business of lending money. The low-income housing credit at-risk rules, however, do not have the 80 percent limitation, and the lender can be a qualified nonprofit organization if certain requirements are met; certain other differences also apply.	
29. At-risk rule for qualified nonprofit organizations	Treats as an amount at risk certain nonrecourse financing provided by a qualified nonprofit organization, provided that certain requirements are met including that the financing is repaid within 90 days after the end of the 15-year compliance period.	Retains present law.
30. State plans	Credits are allocated by State allocating agencies.	Mandates the development of a plan of allocation by State allocating agencies.
31. Allocation of only necessary credits	For new or substantially rehabilitated property, allocating agencies may allocate up to a 70-percent present value credit. For acquisition property and Federally-subsidized property, the allocating agency may allocate up to a 30-percent present value credit.	Mandates that credit allocations to a building not exceed the level necessary for the financial feasibility of the project.
32. Project evaluation	Allocating agencies may use any guidelines they choose to allocate credits to eligible properties.	Mandates State allocating agency evaluation of each credit project according to pre-established criteria.
33. Local charities	Ten percent of each State's credit cap is set aside for use by qualified nonprofit organizations.	Encourages that the allocation of the special 10 percent set aside for charities from the State's annual credit cap be directed to local charities active in the development, operation, and maintenance of low-income housing.

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34. Semiannual determination of credit percentage	Credit percentages are determined monthly by the Secretary.	Determines credit percentages on a semi-annual, rather than a monthly, basis.
35. Trusts and estates	The operation of the credit in relation to trusts and estates is not specifically addressed.	Clarifies the treatment of the credit in the case of trusts and estates.
36. Administrative provisions	Requires that credit forms be filed within 90 days after the end of the first taxable year in the credit period.	Allows the taxpayer to file credit forms on the same day as required for filing tax returns.
37. Transaction costs	No restrictions are placed on transaction costs associated with credit properties.	Retains present law.
38. Effective date	The credit is scheduled to expire after December 31, 1989.	The proposal is generally effective for determinations made under section 42 of the IRC with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989. For projects not subject to the credit allocation limits, the provision generally applies to buildings placed in service after December 31, 1989. The possible option relating to the $25,000 allowance under the passive loss rules would be effective in taxable years ending after December 31, 1989, for property placed in service after December 31, 1989; in addition, if the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989.